New Jersey Board of Public Utilities
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Coalition for Community Solar Access and Solar Energy Industries Association Comments on the Staff Straw Proposal for the Permanent Community Solar Energy Program

Docket No. QO22030153

The Coalition for Community Solar Access ("CCSA") and Solar Energy Industries Association ("SEIA") appreciates this opportunity to provide written comments on the Board of Public Utilities ("BPU") Staff Straw Proposal ("Straw Proposal") for the permanent Community Solar Energy Program. CCSA and SEIA applaud Staff for developing a robust Straw Proposal that leverages lessons learned from New Jersey's Community Solar Energy Pilot Program ("Pilot") while also incorporating best practices established in other community solar markets. CCSA and SEIA are broadly supportive of the Straw Proposal and look forward to the establishment of regulations and ultimate opening of the highly anticipated permanent program. That said, there are a few areas of the Straw Proposal that could be improved, and/or deserve greater consideration. The following comments are separated into two categories: high priority areas for improvement, additional improvements, clarifications and considerations. Please note that if CCSA and SEIA are not commenting on a specific area of the Straw Proposal it is because we are in concurrence with Staff. ALSO SEE ATTACHED REDLINES OF THE STRAW PROPOSAL RULES.

CCSA and SEIA BACKGROUNDS

CCSA is a national, business-led trade organization, composed of over 100 member companies, that works to expand access to clean, local, affordable energy nationwide through the development of robust community solar programs. Its members range from pure-play project developers to companies focused on customer engagement, and everything in between. CCSA and its over 30-member companies currently engaged in New Jersey have been active participants in the development of the Pilot in New Jersey and are excited for the establishment of the Garden State's permanent program.

SEIA is the national trade association for the United States solar industry. As the voice of the industry, SEIA works to support solar as it becomes a mainstream and significant energy source by expanding markets, reducing costs, increasing reliability, removing market barriers, and providing education on the benefits of solar energy and energy storage. SEIA works with its 1,000 member companies and other strategic partners to advocate for policies that create jobs and shape fair market rules that promote competition and the growth of reliable, low-cost solar power. SEIA's member companies range from manufacturers, residential, community solar, commercial, and utility-scale solar developers, installers, construction firms, investment firms, and service providers. SEIA has nearly 50 member companies located in New Jersey with several more national firms also conducting business in the state.

HIGH PRIORITY AREAS FOR IMPROVEMENT

CCSA and SEIA call out three primary areas of the Straw Proposal that we deem as high priority with regards to needed adjustments. The changes we seek are under the following three broader categories of: application process and selection; consolidated billing; and overall program capacity.

6) Application Process and Project Selection

Staff Recommendation: *To prevent the need for applications to be rushed to submission upon the opening of the registration portal, Staff recommends that a tiebreaker process may be employed if capacity blocks are filled quickly. In that case, all projects submitted within the first ten business days of the registration period will be reviewed for completeness and eligibility. As part of the registration process, projects will be asked to submit a minimum guaranteed bill credit savings rate that they would offer to subscribers. In the event that any EDC capacity block is oversubscribed, all complete and eligible applications will be ranked by the offered savings rate. The projects with the highest offered savings rates will be granted conditional approval for participation in the Permanent Program. Projects not selected will have the opportunity to reapply during the next application period.*

CCSA & SEIA Comment and Recommendation: CCSA and SEIA support the use of a first-come, first-serve process for the permanent program and acknowledge the need for a tiebreaker in the case where demand exceeds supply. However, CCSA and SEIA recommend against using the discount rate as a determining factor in a tie-breaker situation due to several drawbacks, including but not limited to:

- Inadvertently creating a competitive solicitation and more complicated administrative process;
- Driving a potential "race to the bottom" and unscrupulous speculation by applicants; and
- Resulting in a program that is biased against more expensive projects (car canopies, etc.) despite a market interest to see that development.

Instead of the discount rate, CCSA and SEIA recommend using the calendar date that an applicant has met its minimum interconnection threshold requirements (see below for further recommendations around the interconnection prerequisites and project maturity requirements) to determine which applicants are awarded capacity. In essence, the tiebreaker would award projects that have an earlier interconnection study or agreement date relative to those that are more recent. This project maturity milestone provides a simple and objective metric to compare projects. Given the interconnection regulations are in the process of being updated and its important role in the permanent community solar program, CCSA and SEIA recommend the Staff closely monitor its effect on the program and each utility's ability to process interconnection applications efficiently and fairly.

15) Consolidated Billing

Staff Recommendation: *Staff further recommends requiring all projects participate in consolidated billing, as all subscribers should be provided its benefits, with uniformity for the customer experience, program messaging, and information sharing.*

CCSA & SEIA Comment and Recommendation: CCSA and SEIA fully support the establishment of consolidated billing with each utility, and particularly the use of net crediting, however we recommend against Staff's proposed requirement that all projects use consolidated billing. Allowing for flexibility here ensures that consolidated billing does not become a barrier for the program. For example, while New York is the first market to establish net crediting which is the best practice associated with consolidated billing, the implementation of it demonstrated that it can be complicated and differ by utility. In New Jersey, subscriber organizations should have a backstop option to utilize dual billing so that they and their subscribers are not held hostage by any delays or errors outside their control associated with a utility's implementation of consolidated billing. In addition, it's notable that some larger customers may have operational or commercial reasons to prefer separate billing.

Staff Recommendation: *Staff also recommends that projects participating in the Pilot also be required to use consolidated billing.*

CCSA & SEIA Comment and Recommendation: Per the comment above, CCSA and SEIA recommend against a requirement for all projects to use consolidated billing. The issues raised above, particularly regarding the potential for delays or errors associated with the utility implementation of consolidated billing, could undermine the development timelines that Pilot-era projects have been working under for the past couple years.

3) Overall Program Capacity

Staff Recommendation: *Staff recommends that, pursuant to the Solar Act of 2021, the annual capacity be set at no less than 150 MW and the cumulative capacity for energy years 2022 to 2026 be no less than 750 MW, with flexibility to increase this capacity allocation depending on market conditions and the Board's policy priorities. Staff recommends allocating at least 225 MW each in EY24 and EY25 and at least 150 in EY26 and beyond to meet statutory requirements and anticipated demand.*

CCSA & SEIA Comment and Recommendation: Staff recommends an annual minimum allocation that results in 600 megawatts of capacity allocated in energy years (EY) 2022 to 2026, even though the Solar Act of 2021 requires a cumulative capacity allocation of "no less" than 750 MW. To ensure a minimum of 750 MW is in fact allocated between EY22 and EY26, CCSA and SEIA instead recommend at least 300 MW be allocated each in EY24 and EY25 and at least 150 MW in EY26. This is justified because it is better aligned with the statutory requirement. In addition, the extended market pause following Year 2 of the Pilot justifies greater initial capacity allocations for the permanent program to meet pent-up demand. As noted below, if the capacity is not fully allocated in any given energy year, CCSA and SEIA recommend that it be pushed to the following energy year. The front loading of capacity in the early energy years, coupled with additional certainty of unallocated capacity being carried forward, will reduce pressure on the BPU to meet its minimum statutory requirements while being more transparent to the market regarding the permanent program opportunity in EY22 to EY26.

Staff Recommendation: *As in the Pilot, Staff recommends that the Board reserve the right to reallocate any unallocated capacity to future years. Staff does not recommend that the Board create a new provision for reallocating capacity that had been previously assigned to projects that fail to reach commercial operation: in most cases, it is not known that projects will not be completed until they reach their completion deadline. There would therefore be a significant time lag in accounting for this additional capacity, which would add unnecessary administrative burden to the program implementation. Staff still recommends that the Board take actual and anticipated project scrub into account when setting annual capacity allocations.*

CCSA & SEIA Comment and Recommendation: CCSA and SEIA recommend a requirement that unallocated capacity be carried forward to future energy years. This will ensure the capacity – and associated budget - remains available for its intended use to drive deployment of community solar projects. Likewise, in the case of a “project scrub”, CCSA and SEIA recommend that any capacity that does not result in an operating project be reallocated in future energy years. This will not only enable the capacity and budget allocations to meet their intended outcomes but will also ensure fairness for applicants in what is anticipated to be a competitive market (e.g., if a project that has been allocated capacity fails to come to fruition, this should not undermine the opportunity for the next qualified project applicant to obtain the newly available capacity).

ADDITIONAL IMPROVEMENTS, CLARIFICATIONS, AND CONSIDERATIONS

The following includes a number of CCSA and SEIA comments and recommendations in response to areas of the Straw Proposal that could be improved, clarified, or simply deserve deeper consideration.

1) Project Size and Co-Location of Projects

Staff Recommendation: *Staff therefore recommends that the Board not permit co-location of community solar projects, defined as siting more than one system on the same property or on contiguous properties, as reflected in tax records, that are under common control or ownership, if their total capacity is greater than 5 MW.*

CCSA & SEIA Comment and Recommendation: CCSA and SEIA recommend allowing for limited co-location up to 10 MW. As Staff acknowledges, although there are separate interconnection costs, there are economies of scale that can be leveraged to bring down the overall cost of projects that are co-located. CCSA and SEIA believe this would be reasonable because it will only result in additional development on preferred sites, such as rooftops and landfills, and potentially help recover the incremental cost of targeting those locations. In Maryland, co-location is allowed for community solar projects that meet similar siting requirements as is proposed in the New Jersey Straw Proposal because it's good to incent development in those types of locations. Further, if there is additional distributed grid capacity that allows for increasing project development in a certain location then it shouldn't go to waste. That said, if Staff were to use the discount rate as a differentiator in a tiebreaker, the potential cost advantages of co-locating projects could contribute to biasing the program against more expensive projects (car canopies, etc.) despite a market interest to see that development (as discussed further above).

2) Project Siting

Staff Recommendation: *At this time, Staff does not recommend allowing dual-use sites on farmland to participate in the community solar program. The Dual-Use Solar Energy Pilot Program may permit participation of community solar projects in the future; in that case capacity allocation and project selection will be dependent on the design of the dual-use program. If projects in the Dual-Use Solar Energy Pilot Program are permitted to be community solar projects, then it is Staff's recommendation that they must also follow both relevant CSEP and Dual-Use Solar Energy Pilot Program rules.*

CCSA & SEIA Comment and Recommendation: CCSA and SEIA recognize that Staff is holding off on considering the incorporation of community solar via the Dual-Use Solar Energy Pilot Program, however for the record CCSA and SEIA are supportive of dual-use (also known as agrivoltaics) being a development option for community solar on farmland. Ensuring coordination between these two programs will maximize ratepayer dollars while directing development towards the Board's preferred policy outcomes of enhancing agricultural viability and connecting low-income ratepayers with community solar savings.

7) Minimum Project Maturity Requirements

Staff Recommendation: *Executed EDC interconnection study for projects 1 MW or larger, or evidence of having submitted a Part 1 Interconnection Agreement to the EDC for projects smaller than 1 MW.*

CCSA & SEIA Comment and Recommendation: CCSA and SEIA agree with Staff's interest to use a high interconnection prerequisite to ensure capacity awards go to the "most viable" projects. CCSA and SEIA are not entirely clear what "executed EDC interconnection study" refers to in the Straw Proposal, nor how this meaning might evolve as the interconnection regulations get updated. That said, as a clarifying premise, CCSA and SEIA recommend the interconnection threshold for program applicants be the last interconnection process step – be it a completed study, signed interconnection agreement, or other milestone - short of commencing project construction. A similar metric should be used regardless of project size. CCSA and SEIA also note that the interconnection requirement appeared in the Staff recommendations, but not in the draft regulations. That should be corrected in the final version.

Staff Recommendation: *Some stakeholders have recommended an application fee or escrow requirement, which would force developers to further invest financially in their application. Staff believes that such a requirement could be useful to show good faith and project readiness; however, Staff is concerned that setting a high financial pre-requisite could act as a barrier to entry to projects proposed by public entities, community organizations, or small developers. Staff however recommends the Board retain the option to impose such a requirement on community solar projects in the future.*

CCSA & SEIA Comment and Recommendation: CCSA and SEIA are supportive of a high-bar for being awarded capacity to prevent speculative applicants, and are also supportive of measures that prevent awarded projects from being able to sit idle without demonstrating continued steps toward construction and operation. CCSA and SEIA have recommended comments into the Grid Modernization docket with regards to interconnection and the need for forcing applicants to provide deposits that ensure they will move forward or get out of the way to make more room in the interconnection queue. This type of safeguard in the interconnection process would also help with providing a similar protection to projects awarded capacity in the community solar program. However, as it stands the interconnection requirements do not carry this type of "teeth" and therefore, CCSA and SEIA recommend incorporating a deposit requirement of $25-$50/kW for projects awarded capacity in the permanent community solar program. When the interconnection regulations are updated, this requirement can be revisited to determine whether there's enough pressure on developers to continue progressing with development.

11) LMI Verification Standards

Staff Recommendation: *Staff also recommends requiring self-attestation to be done through a third-party platform or organization who would be responsible for maintaining records.*

CCSA & SEIA Comment and Recommendation: CCSA and SEIA recommend strongly against relying on a 3rd party that may present an additional barrier to low and moderate income ("LMI") customers signing up for community solar. Subscriber organizations should be able to verify customers' eligibility directly. A 3rd party may be suitable for reviewing and retaining documentation, but should not be structured as an impediment to the sign-up process. CCSA and SEIA recognize that the Board may be concerned about the potential for some actors to take advantage of the self-attestation process. To that end, the Board should explicitly retain the authority to audit subscriber organizations to ensure they are properly managing this process. CCSA and SEIA look forward to working with the Board on this matter, including on the development of a standard attestation form.

Staff's Proposed Regulation: *Qualification of a household as low- to moderate-income is required at the time of execution of the subscription agreement, when a subscriber moves to a new utility account, and on every fifth anniversary of the subscription.*

CCSA & SEIA Comment and Recommendation: CCSA and SEIA recommend against any type of reverification need associated with LMI participants – including a change in utility account and/or over extended periods of time. It is unnecessary from a policy standpoint given any movement by the customer around that threshold of being deemed "LMI" is unlikely to be significant. It also potentially creates a new round of burden for the customer – depending on the verification method.

Staff's Proposed Regulation: *Any of the following may be accepted by a subscriber organization as proof of LMI status for individual subscribers: Proof of participation in one or more of the following: LIHEAP, Universal Service Fund, Comfort Partners, Lifeline Utility Assistance Program, Payment Assistance for Gas and Electric, Section 8 Housing Choice Voucher Program, Supplemental Nutrition Assistance Program, the Lifeline program administered by the Universal Service Administrative Company, Supplemental Security Income, Social Security Disability Insurance, Special Supplemental Nutrition Program for Women, Infants, and Children, Temporary Assistance for Needy Families, or other low- or moderate income local, State, or Federal programs, as may be added to this list by the Board by Board Order*

CCSA & SEIA Comment and Recommendation: Staff's proposed regulations fail to include Staff's recommendation, provided in "11) LMI Income verification standards", to include Medicaid. CCSA and SEIA recommend including that in the regulations.

<u>12) Participation by Housing Providers</u>

<u>Staff Recommendation:</u> *<u>Staff recommends allowing affordable housing providers to qualify as an LMI subscriber, provided that they submit an affidavit indicating that they will pass on 75% of the electricity bill savings to residents in the form of direct payments or rebates at least once per year.</u>*

CCSA & SEIA Comment and Recommendation: CCSA and SEIA want to be sure that participation in the community solar program will not undermine the ability of housing providers to leverage other energy burden related benefits that may be offered through federal or other agencies. Experience from other markets and CCSA member feedback from New Jersey stakeholders is that requiring "direct payments" would be problematic and likely prevent participation by housing providers in the program. Staff should explore the potential for this conflict and provide safeguards that protect housing providers – and their tenants - ability to participate in and benefit from community solar without undermining their participation in other programs.

<u>14) Bill Credit Banking/Excess Bill Credits</u>

Staff Recommendation: *For subscribers, Staff recommends credits shall carry over monthly billing periods until the end of an annualized period, the closure of their utility account, or the end of their subscription, at which time excess net bill credits shall be compensated at the EDC's avoided cost of wholesale power.*

CCSA & SEIA Comment and Recommendation: CCSA and SEIA recommend that credits banked on customer accounts should be able to rollover indefinitely (at least over several years). This is the industry best practice and ensures customers receive maximum benefits from their subscriptions. Customers should not be penalized if they are unable to use their credits within an arbitrary timeframe. Further, the "annualized" period approach proposed by Staff is unnecessarily complicated for the Board, EDC, and subscriber organizations. At the very least, <u>all</u> subscriber organizations – not just those involved in an automatic enrollment project (as proposed in Staff's Draft Rules) – should be able to determine and set an annualized period for their subscribers. That said, allowing for indefinite rollover of credits will maximize benefits to subscribers while reducing unnecessary administrative oversight and burden for the EDC, Board, and subscriber organizations.

Staff Recommendation: *For project operators, Staff recommends generation not allocated to a subscriber may be banked for up to 12 months from the start of project operation. From that point, the banked credits may be held for 12 additional months to be allocated to new subscribers, after which they shall be compensated at the EDC's avoided cost of wholesale power.*

CCSA & SEIA Comment and Recommendation: CCSA and SEIA recommend subscriber organizations be able to bank unsubscribed generation credits for up to two years from the point at which they accrued, rather than being limited to the initial two years of the project's operation. This will allow for turnover of customers at later points for the project beyond its initial two years of operation without the daunting financial risk of lost revenue. Being able to rollover credits for longer periods of time also allows projects to even out the reallocation of credits to customers without a 'shock' that can lead to a bad customer experience. CCSA and SEIA also note that if Staff were to continue with their recommendation, that the regulations need to at least be clarified that anything unallocated up to the initial 24 months <u>**and thereafter** shall be compensated at the EDC's avoided cost of wholesale power. As it stands, the Straw Proposal could be interpreted as suggesting there is no compensation for unallocated bill credits after the initial 24 months, which creates a significant perceived financing risk.</u>

<u>19) SREC-II Values</u>

Staff questions for stakeholders 19*: The IRS has released an initial guidance document for the ITC adder in the Inflation Reduction Act ("IRA") for projects that benefit low-income communities. Do you believe the permanent program will appropriately align with federal solar incentives? Should the incentive available for community solar projects in the ADI Program be modified to reflect the fact that projects may or may not qualify for the ITC adders for siting in energy communities designated in the IRA or for being low-income benefit projects?*

CCSA and SEIA Comments and Recommendations: While initial federal guidance has been released regarding the IRA and associated solar incentives, there are still fundamental details that are not yet determined. CCSA and SEIA therefore recommend holding off on establishing any policies that connect the state's permanent community solar program to the federal incentive opportunities. When the federal guidance is issued, Staff and stakeholders should work together in developing program mechanisms that would help spread the benefits of any additional federal incentives that are able to be leveraged by specific community solar projects. CCSA and SEIA's initial thinking here is that the minimum discount rate associated with LMI participants in a project would be the most direct and flexible lever to adjust based on a project's receipt of ITC adders. However, without additional federal guidance and clarity, Staff should for now make a placeholder for this element of the program and be prepared to convene stakeholders again in the future.

<u>23) Automatic Enrollment</u>

Staff Recommendation: *Staff therefore recommends permitting automatic enrollment with standards similar to those set in the rules proposed in 2020, but automatic enrollment may not be implemented until after consolidated billing has been implemented, which should be no later than May 1, 2024. At least 80 percent of subscribers to an automatic enrollment project must be LMI subscribers. Staff believes the benefits of easier enrollment of low-income residents are substantial and that eligible projects in both the Pilot and Permanent Program should be able to make use of these processes.*

CCSA and SEIA Comments and Recommendations: CCSA and SEIA recommend evaluating additional parameters before considering opt-out community solar offerings through local governments. This is an unprecedented policy for competitive community solar markets and BPU Staff should tread carefully with its introduction in New Jersey. Indeed, in neighboring New York where there is over a gigawatt of operating community solar projects, the New York Department of Public Service ("DPS") is conducting an active proceeding where it is exploring considerations associated with allowing opt-out community solar for community choice aggregators (CCAs) and utilities to determine appropriate parameters and regulations. As of now, CCAs in New York are not allowed to use opt-out community solar in part due to concerns with inequitable distribution of community solar to low-income households. In New Jersey, there are at least several important factors to weigh with regards to evaluating opt-out options in an otherwise competitive community solar market, including but not limited to:

- Potential for monopoly and inequitable distribution of community solar. Because a local government can represent thousands of accounts, just a few local governments could use all the available capacity. Without capacity limits, local government community solar could threaten to monopolize the market and undermine the potential for those living outside the local governments offering programs to access the program and its benefits. What limitations should be in place to prevent this type of market imbalance and geographic discrimination?
- Cost-benefit differences. It's believed that automatic enrollment of subscribers is easier and less costly compared to having to actively market to and acquire participants. Given the reduced customer acquisition cost, should the incentives funding those projects achieve greater outcomes than the standard 10% credit discount?
- Consumer choice and protections. There is potential for confusion and an undermining of consumer choice and protections for a local government leveraging opt-out enrollment. For example, if a local government has more customers than project capacity, how will they select which customers participate, how would subscriptions be assigned, and how will this be communicated to those enrolled versus those that are not? Will automatically enrolled customers still technically be an available market for advertising by third-party subscriber organizations seeking to offer different subscription benefits? Will the local government role create a perceived risk or distrust of the third-party competitive market?

CCSA and SEIA recommend creating a separate subgroup facilitated by Staff to explore the above considerations and make sure that the implementation of an automatic enrollment option for local governments does not undermine New Jersey's community solar permanent program. As noted previously, this investigation should not delay the overall program implementation. However, if Staff intends to move forward with automatic enrollment without further deliberation, CCSA and SEIA recommend the following initial parameters be established:

- Project location should be within the given local government's geographic boundary. The intent of this requirement is to prevent it from monopolizing participation opportunities from the rest of the State. It has the added value of giving a local government benefit associated with more localized project development and economic activity.
- The local government should advertise for and solicit bids from solar developers to maintain a competitive landscape and ensure the customer and community are receiving the best benefit. For example, local government community solar should result in benefits that go above and

beyond the minimum 10% discount provided to the automatically enrolled customers in the form of higher discount rates, or potentially other community benefits such as the establishment of a park or other resource. The intent of this requirement is to leverage potential cost savings associated with automatic enrollment to be used for additional benefits for the local government's community.

- There should be requirements to ensure abundant transparency and protections for customers in a local government territory where automatic enrollment is occurring. Customers should be aware if they are being signed up for project benefits, but they should also know it's a competitive market and other third-party options may exist. Conversely, customers who are already enrolled with a third-party should not be kicked off and enrolled in an opt-out program.

Regardless of Staff's ultimate recommendation here, CCSA and SEIA strongly urge the close monitoring and ability to review and make adjustments to this new policy element for community solar.

<u>24) Community Engagement</u>

Staff Question for Stakeholders 24: *What should community engagement and subscriber acquisition plans include to ensure that meaningful collaboration with the surrounding community has taken place and the project will be able to meet its LMI requirements?*

CCSA & SEIA Comment and Recommendation: CCSA and SEIA support community engagement, but BPU Staff should aim for requirements that are objective and administratively streamlined. For example, given this is a first-come, first-serve program the BPU should be using a "yes/no" or checkbox approach to reviewing applications rather than having to weigh more qualitative responses that are harder to compare.

<u>26) Pilot Program</u>

Staff Question for Stakeholders 26: *Which other provisions of the Permanent Program should or should not also apply to the Pilot?*

<u>CCSA & SEIA Comment and Recommendation:</u> CCSA and SEIA recommend allowing Pilot projects to be able to subscribe customers across the given EDC territory rather than having stricter proximity requirements, similar to the permanent program. This did not appear to be proposed as retroactive for the Pilot program based on Staff's recommendations and Straw Proposal, but CCSA and SEIA believe it is reasonable to allow for this flexibility and to enable broader access.

CCSA and SEIA again express our appreciation for the opportunity to provide input on the Board's Straw Proposal for the permanent community solar energy program. Community solar can play a key role in preparing New Jersey to meet its Energy Master Plan goals of 5.2 GW of solar by 2025, 12.2 GW by 2030, and 17.2 GW by 2035. We look forward to our continued engagement in this proceeding in ensuring the effective rollout and implementation of the community solar permanent program.

Respectfully submitted,

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